IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Custom Application No. 30 of 2002

The Commissioner of Customs,
(Import), Mumbai .. Applicant
V/s.
Bharat Water Works, Noida .. Respondent

Mr. P.S. Jetley with Ms. Neeta Masurkar for the Applicant

None present for the Respondent

CORAM : S. RADHAKRISHNAN &
J.H. BHATIA, JJ.
DATED : 29.06.2005.

P.C.:-

1. Heard the learned counsel for the Applicant. By the above Application, the Applicant is seeking to raise the following three substantial questions of law:-

(1) Whether on the facts and in the circumstances of the case the Tribunal was right in law in reducing the redemption fine imposed u/s. 125 of the Customs Act, 1962 from Rs. 5,10,000/- to Rs. 2,55,000/- and penalty, imposed u/s. 112(a) from Rs. 1,25,000/- to Rs. 65,000/- by following Appraising Manual, Volume V, Chapter 3, Para 4 & 5, without appreciating that the facts in the instant case are wholly distinguishable from the facts of those cases?

(2) Whether on the facts and in the circumstances of the case the Tribunal was right in law in scaling down the redemption fine and the penalty in respect of a negative list item by following its earlier orders and Appraising Manual, Volume V, Chapter 3, Para 4 & 5, without appreciating the individual merit of the case?

(3) Whether on the facts and in the circumstances of the case the Tribunal was right in law in intervening with the redemption fine of Rs. 5,10,000/- imposed under Section 125 by the Commissioner of Customs (Imports) and reducing it to Rs. 2,55,000/- and with the penalty of Rs. 1,25,000/- imposed under Section 112(a) by the

Commissioner of Customs (Imports) and reducing it

to Rs. 65,000/- without examining the facts of the case?

2. Mr. Jetley, the learned counsel for the Applicant fairly stated that the issue raised in the present application has already been considered by a Division Bench of this Court and the Court was pleased to reject the same in judgment in **Commissioner of Customs, Nhava Sheva v. Marmo Classic 2003 (156) E.L.T. 14 (Bom.)**. In the present case, rough marble blocks were involved and the issue is whether the Tribunal was right in law in reducing the redemption fine and penalty. The very same issue is considered by the Division Bench in the above.

3. We have also perused the Tribunal's order. The issue whether the reduction in redemption fine and penalty is justified or not, is essentially a finding of fact and there is no material adduced by the Revenue to establish that the order of the Tribunal is ex-facie perverse, arbitrary and contrary to the facts on record. Under these circumstances, we are not inclined to entertain the above Application. Application stands dismissed, however, with no order as to costs.

(S. RADHAKRISHNAN, J.)

(J.H. BHATIA, J.)